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OFFICE OF PETITIONS

In re Application of
Patrice Brachat
Application No. 10/044,483
Filed: January 11, 2002
Attorney Docket No. 012302.P021

DECISION ON PETITION

This is a decision on the petition under 37 CFR §1.137(a), filed October 21, 2005, which is being treated as a petition under 37 CFR §1.181 (no fee) requesting withdrawal of the holding of abandonment of the above-identified application.

The petition under 37 CFR §1.181 is **GRANTED**.

The petition under 37 CFR §1.137(a) is **DISMISSED as moot** in view of the granting of the petition under 37 CFR §1.181.

BACKGROUND

A Notice of Allowance and Fee(s) Due/ Notice of Allowability (Notice) was mailed to the correspondence address of record on November 10, 2004, which set a non-extendable statutory period of three (3) months within which to pay the issue fee. As the issue fee was not submitted on or before the due date, this application became abandoned by operation of law (respectively, 35 USC 151 and 133) on February 11, 2005. The Notice(s) was (were) returned by mail on November 29, 2004.

A) Petition treated under 37 CFR 1.181

The petitioner requests withdrawal of the holding of abandonment, stating that the Notice was mailed to the wrong address. A review of the file reveals that a request for correction of Office Records was submitted on April 26, 2004. This correspondence was directed to "Mail Stop RECORDS". Closer inspection of the correspondence shows a request for change of correspondence address was intended. MPEP 601.03 states when filing an application, a correspondence address must be set forth in either an application data sheet (§ 1.76), or elsewhere, *in a clearly identifiable manner*, in any paper submitted with an application filing. The oath filed April 12, 2002 failed to change the correspondence address in accordance with MPEP procedures, and consequently every subsequent Office action was sent to the original

address of record. At no time after the filing of the oath on April 12, 2002 and before the filing of the request to change Office Records on April 26, 2004 did counsel notify the Office of the desired correspondence address. MPEP 601.03 further states that when an attorney or agent of record changes the correspondence address, he or she is responsible for promptly notifying the U.S. Patent and Trademark Office of the new correspondence address (including ZIP Code). While the communication of April 26, 2004 was sent to Mail Stop RECORDS in error, it will nonetheless be treated as a request for change of address as an appointed attorney of record has properly signed the document.

For the reasons explained above, the withdrawal of the holding of abandonment is granted. As there is no fee for the withdrawal of abandonment, the petition fee of \$500.00 has been refunded to deposit account No. 02-2666.

B) Petition filed under 37 CFR 1.137(a)

The petition is dismissed as moot under 37 CFR 1.137(a) in view of the granting of the petition under 37 CFR §1.181.

Telephone inquiries concerning this decision should be directed to Douglas Wood, the undersigned, at (571) 272-3231.


Douglas Wood
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